

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054**

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20054

In the Matter of )  
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Policy and Rules Concerning the ) CC Docket 96-61  
Interstate, Interexchange Marketplace )

**COMMENTS OF URSUS TELECOM CORP.**

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## **EXECUTIVE SUMMARY**

Ursus Telecom Corp. (“UTC”) commends the Commission’s commitment to ease the regulatory burdens of non-dominant interexchange carriers (“IXCs”), and supports the Commission’s tentative conclusion to eliminate the requirement that non-dominant IXCs file tariffs. But rather than impose a mandatory detariffing policy, UTC urges the Commission to adopt a permissive tariffing policy. A permissive tariffing policy will allow carriers the option to file standardized contract tariffs or to enter into individual service contracts. A permissive tariffing policy meets the statutory requirements necessary for the Commission to exercise its forbearance authority, is in the public interest, and does not impose on IXCs the high transactional costs and administrative burdens that are associated with a mandatory detariffing policy.

To the extent the Commission eliminates its mandatory tariff filing requirements, more carriers will be entering into contract-based service arrangements. As a result, the Commission must adopt policies that ensure that the terms of a service contract will not be unilaterally altered by a carrier with the filing of a superseding tariff. UTC urges the Commission to adopt a policy that ensures that the terms of a service contract will control over any subsequent tariff filings that may seek to alter the terms of that contract.

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Ursus Telecom Corp. ("UTC"), by its undersigned counsel, hereby submits the following Comments in response to the Federal Communications Commission's ("Commission") *Notice of Proposed Rulemaking* in the above-referenced proceeding.<sup>1/</sup> UTC commends the Commission's commitment to ease the regulatory burdens for non-dominant interexchange carriers ("IXCs"). UTC urges the Commission, however, to adopt a permissive, rather than a mandatory, detariffing policy for non-dominant IXCs. A permissive tariffing policy will better serve the interests of consumers and carriers in the form of lower user rates and the availability of more services. A mandatory forbearance of the current tariff filing requirements, however, will impose higher costs and administrative burdens on carriers and users, resulting in higher user rates and fewer available services.

The adoption of a forbearance policy that does not require non-dominant IXCs to file tariffs, will result in an increased use of contract-based service arrangements. The competitive conditions

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<sup>1/</sup> *In re* Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, *Notice of Proposed Rulemaking*, FCC 96-123, CC Dkt. No. 96-61, released Mar. 25, 1996 ("*Notice*").

that exist in today's long distance market dictate that the terms of a service contract should control over any tariff modifications that may seek to alter that contract. UTC, therefore, urges the Commission to adopt a policy that prohibits a carrier from unilaterally altering the terms of contract-based service arrangements through the filing of tariff terms that are permitted to supersede the terms of the contract.

#### I. INTRODUCTION AND STATEMENT OF INTEREST

UTC is a non-dominant carrier that provides domestic interstate interexchange services. UTC also provides resold international telecommunications services to multiple customers worldwide,<sup>2/</sup> and has an application pending to provide facilities-based international services between the United States and various international points.<sup>3/</sup> UTC's primary goal is to provide high quality, low-cost services to its customers. To assist it in achieving this goal, UTC utilizes the tariffing process to analyze the price and product information of competitors so that it may better serve its customers and better assess its market opportunities. UTC also files its own tariffs as a means of reducing the transactional and administrative costs associated with negotiating individual contracts in a mass market.

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<sup>2/</sup> See, *Ursus Telecom Corp.*, FCC File No. I-T-C-94-346, Public Notice Report No. I-7017 (rel. Aug. 10, 1994).

<sup>3/</sup> See, *Ursus Telecom Corp.*, FCC File No. I-T-C-96-223, Public Notice Report No. Tel-6-A (rel. April 16, 1996) (accepting for filing UTC's application to provide facilities-based international telecommunications services).

UTC supports the Commission's tentative conclusion that non-dominant carriers should not be required to file tariffs. However, UTC urges the Commission not to adopt its tentative conclusion that a mandatory forbearance policy should be imposed on non-dominant IXC's. The Commission's proposal would require all non-dominant IXC's to withdraw their current tariffs and would prohibit them from filing tariffs in the future. This mandatory forbearance policy is a disservice to consumers and interexchange carriers and threatens to reverse the progress that has been made to open the long distance market to robust competition. For these reasons, UTC urges the Commission to refrain from adopting a mandatory forbearance policy and urges the Commission to implement a permissive tariffing policy that will permit IXC's to efficiently operate in a competitive market.

II. THE COMMISSION HAS THE AUTHORITY TO ADOPT A PERMISSIVE TARIFFING POLICY THAT IS IN THE PUBLIC INTEREST AND SERVES TO REDUCE ADMINISTRATIVE COSTS AND BURDENS ASSOCIATED WITH A MANDATORY FORBEARANCE REQUIREMENT.

A. *Section 401 of the Telecommunications Act Grants the Commission the Authority to Adopt a Permissive Tariffing Policy.*

The Commission has the authority to implement a permissive tariffing policy pursuant to Section 401 of the Telecommunications Act of 1996 ("1996 Act"), which authorizes the Commission to forbear from applying statutory regulatory provisions if the Commission determines that such regulations: 1) are not necessary to ensure just and reasonable charges and practices on the part of telecommunications carriers and their services; 2) are not necessary to protect consumers; and 3)

are consistent with the public interest.<sup>4/</sup> Section 401 further provides that in making its decision under Section 401 as to whether forbearance is in the public interest, the Commission “shall” consider whether forbearance will “promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers . . . .”<sup>5/</sup> If the Commission finds that forbearance will promote competition, “that determination may be the basis for a Commission finding that forbearance is in the public interest.” As demonstrated below, a permissive tariffing policy meets of the statutory requirements that permit the Commission to exercise its forbearance authority, and most importantly, such a policy promotes the public interest.

*B. Permissive Tariffing is in the Public Interest Because it is Pro-competitive and Produces Economic Benefits that will be Realized by Consumers.*

A permissive tariffing policy, similar to the one the FCC had in place prior to the Supreme Court’s decision in *MCI Telecommunications Corp. v. AT&T*,<sup>6/</sup> provides a variety of benefits, all of which support the statutory requirements for forbearance. As the Commission itself has stated, “permissive detariffing has proven to be a success over the years, as evidenced by the robust competition in the interexchange market and the increased choices for customers with respect to carriers and prices.”<sup>7/</sup> Permissive tariffing grants non-dominant carriers the option of filing tariffs or entering into contracts with individual customers. With this option, a carrier can choose the most

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<sup>4/</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, § 401.

<sup>5/</sup> *Id.*

<sup>6/</sup> 114 S.Ct. 2223 (1994).

<sup>7/</sup> See Tariff Filing Requirements for Interstate Common Carriers, *Report and Order*, 7 FCC Rcd. 8072, 8079 (1992) (“*Permissive Detariffing Order*”).

cost-effective method for providing service to their customers, thereby allowing the carrier, who is in the best position to assess its transactional costs of doing business, to more efficiently respond to the market and to their customers needs. This efficiency will result in lower costs to the carrier, and consequently, will lower user rates and increase the number of services available to consumers.

Permissive tariffing also may prevent anticompetitive practices and enhance competition by ensuring that product and price information is disseminated freely in the marketplace. If carriers are prohibited from filing tariffs, carriers and consumers will be prevented from accessing an important source of pricing, product and service information. Access to such information is critical for carriers and consumers operating in a free market to better enable them to compare the services and products of IXC's and make informed decisions and choices with regard to domestic long distance services.

The assurance of a continued robust competitive long distance market is best realized if the Commission applies its forbearance authority and adopt a permissive tariffing policy, rather than a mandatory detariffing policy. A policy that embraces the benefits of both contractual and tariff regulatory regimes is in the public interest because it will ensure that consumers receive the benefits of competitive long distance services while continuing to gain the protections afforded by tariffs. UTC, therefore, submits that carriers should be permitted to judge for themselves whether tariffs, individual contracts, or both provide them with the greatest ability to compete in the long distance market, and consequently, to provide consumers with lower prices and the availability of more services.

C. *Mandatory Forbearance Imposes Barriers and Burdens on the Provision of Long Distance Services.*

Mandatory forbearance, unlike permissive tariffing, is contrary to the public interest because it will result in higher user rates and will limit the services that are available to consumers, in contravention of the competitive policy goals of the 1996 Act. Mandatory forbearance from the Commission's current tariff filing requirements would impose high transactional costs and administrative burdens on non-dominant carriers, especially smaller IXC's and those carriers that serve multiple end users and resellers. These higher costs will result in higher user rates and fewer available services. Moreover, these high transactional costs will have a disproportionate impact on smaller interexchange carriers, and thus, will discourage market entry. Consequently, a permissive tariffing policy is the only means by which the Commission can ensure that consumers realize the benefits of lower prices and higher quality services in a robust competitive long distance market.

As the Commission noted in its *Permissive Detariffing Order*, mandatory filing requirements for non-dominant carriers "inhibit competition, service innovation, entry into the market, and the ability of firms to respond quickly to market trends." The Commission also found that such barriers "impair[ed] competition by delaying or deterring carriers in their service and rate offerings and causing them to bear additional costs." As a result, users paid higher rates and had fewer services available to them.<sup>8/</sup>

The Commission's initial implementation of a forbearance policy prior to the *MCI Telecommunications Corp. v. AT&T* decision was a key factor in opening the long distance market

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<sup>8/</sup> *Permissive Detariffing Order*, *supra* note 6, at 8079.



to robust competition and increased choices for consumers with respect to carriers, prices and services. Given the increased number of carriers, consumers, and services available in today's long distance market, however, a mandatory forbearance policy could actually stifle competition, rather than opening the market to further competition as was intended by Congress with the passage of the 1996 Act. Application of a mandatory forbearance policy to the current long distance market would impose higher costs and administrative burdens on numerous IXC's that are forced to negotiate separate contracts with potentially hundreds of customers. It would impair competition by failing to make pricing, product, and service information available to IXC's and users, and it would impede the IXC's' ability to respond quickly to market trends. The ultimate consequence is higher user rates and fewer services available to meet the needs of consumers; the very same barriers and burdens that require the elimination of the mandatory tariffing requirements. UTC, therefore, urges the Commission to refrain from adopting a mandatory detariffing policy.

### III. THE TERMS AND CONDITIONS OF CONTRACT-BASED SERVICE ARRANGEMENTS SHOULD TAKE PRECEDENCE OVER TARIFF FILINGS THAT ATTEMPT TO SUPERSEDE SUCH TERMS.

A forbearance policy that does not require carriers to file tariffs will increase the use of contract-based service arrangements. As a result, it is essential that the Commission adopt policies that protect customers from carriers that attempt to unilaterally abrogate these service contracts by filing superseding tariffs. If a customer enters into a contract with a carrier, that contract should control over all tariff changes that may serve to materially alter the contract.

Permissive tariffing allows carriers the option to file tariffs in the form of a standardized contract that can serve a mass market. Permissive tariffing also allows carriers to enter into specialized contracts with individual customers to meet the specialized needs of those customers. The marketplace conditions that determine the terms and conditions of these specialized contract-based service arrangements between carriers and customers are rendered meaningless if a carrier, as one party to the arrangement, is permitted to unilaterally alter the terms of that arrangement merely by filing a tariff that is permitted to supersede the terms of that arrangement.

Under the “filed rate doctrine” if a filed tariff rate differs from a rate set in a non-tariffed contract, the tariffed rate takes precedence.<sup>9/</sup> Thus, a carrier is permitted to unilaterally change a rate by filing a new tariffed rate unless the Commission finds that rate to be unjust, unreasonable, or unlawful under the Communications Act. The filed rate doctrine, however, was imposed in an era of monopolistic public utilities as a means of preventing those utilities from discriminating among carriers and customers. This doctrine and its harsh results have no place in today’s competitive long distance market. If a carrier engages in discriminatory behavior, customers have the option of changing carriers. The benefits of this choice, however, are lost if carriers are permitted to alter the terms of contracts that are negotiated under competitive conditions. UTC, therefore, urges the Commission to adopt a policy that assures customers that when they enter into contracts with carriers the terms and conditions of those contracts will not be unilaterally altered by the carriers in subsequent tariff filings.

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<sup>9/</sup> *Armour Packing Co. v. United States*, 209 U.S. 56 (1908).

#### IV. CONCLUSION

Based on the foregoing, UTC urges the Commission to refrain from adopting a mandatory detariffing policy, and requests the Commission use its forbearance authority to adopt a permissive tariffing policy. As demonstrated above, a permissive tariffing policy is in the public interest and will avoid the high transactional costs and administrative burdens that will result from a mandatory detariffing policy. UTC also urges the Commission to adopt a policy that ensures that the terms and conditions of contract-based service arrangements will not be superseded by tariff filings.

Respectfully submitted,

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